IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 5653 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GIRIJABEN D/O VIPINBHAI LXMANBHAI VASA & 4 - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR NITIN M AMIN for Applicant(s) : 1 - 5.
Mr H.L. Jani, Addl.PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 13/03/2007

ORAL JUDGMENT

1. The petitioners have invoked the provisions of section 482 of the Code of Criminal Procedure,

1973 for the prayers of quashing the charge at Exh.45 framed against the petitioners in Sessions Case No.200/92 for the offences punishable under section 302 read with section 120-B and section 34 of Indian Penal Code, 1860, and for directing the Sessions Court to hold separate trial for the present petitioners. Exh. 45 dated 5.8.1996 is the charge for the offences, *inter-alia,* of double murder and destruction of evidence which were allegedly committed on 29.8.1990.

2. After the initial order of admission and grant of interim relief staying further proceedings of Sessions Case No.200/92, the office was, by order dated 10.12.1996, directed to be careful while enlisting the matter on admission board and further directed to place the matter on final hearing board commencing on 6.1.1996. Thereafter, after being listed for a few times in 1997, the matter was straightaway listed in 2002 and every time hearing was adjourned for one or the other reasons. On 23.10.2002, the following order was made:

> *"Learned counsel Mr Amin sought time on the ground that he was busy in another part-heard matter. The learned APP has consented to adjournment beyond vacation, according to him. It is unfortunate that in the matter pending since 1996 wherein ex parte interim relief is operating and serious case against the petitioners is pending since 1992 in the court of the learned Additional Sessions Judge, Ahmedabad, nobody appears to be keen to proceed with the matter. In the facts and circumstances, however, the matter is adjourned beyond vacation with the understanding that no further adjournment shall be asked by any one on either side."*

Even thereafter the petition does not appear to have been listed or heard till it was again listed straightaway in February, 2006.

3. Ultimately on 25.1.2007, the following order was passed *:*

> *"Even after earlier order dated 23.10.2002, it appears that nothing except adjournments has happened in the present proceedings. Today, adjournment is sought on behalf of Mr Amin by learned advocate Ms.*

Amee Yagnik on the ground that today Mr Amin has some personal difficulty in attending the hearing. The personal difficulty is not defined or revealed. She further submitted that she was not in a position to communicate to him that the court was not inclined to adjourn the hearing. She, however, fairly conceded that the factum of ex-parte interim relief operating since November, 1996 in a serious case of heinous offences alleged to have been committed in the year 1990 was, indeed, a serious matter.

Therefore, the interim relief is vacated and due to absence of learned counsel on either side, final hearing is adjourned to 05.2.2007 and intimation of vacation of the interim relief shall immediately be forwarded to the trial court."

4. After above record of the proceedings and operation of stay against further proceedings of the trial court for more than a decade, and 17 years after the alleged offences, the present petition is sought to be unconditionally withdrawn with liberty, and with a view, to take in the trial court all the defences that may be available to the

petitioners. Thus, the net outcome of the present proceeding is that the trial against the petitioners as well as the other accused persons has been scuttled for 10 years without the petition being heard and disposed on merits. Seventeen years after the alleged offence is a long enough period for memories of witnesses to fade, if all of them were surviving, or for destruction of some of the evidence and frustration of the cause of justice. *If justice delayed is justice denied*, the present proceeding has successfully denied justice not only to the surviving relatives of the victims but to the petitioners and other co-accused.

5. Therefore, the present petition clearly appears to have resulted into serious and grave abuse of the process of court and hence the petition is dismissed as withdrawn with the direction that each of the petitioners shall pay to the Gujarat State Legal Services Authority the sum of Rs. 10,000/- (Rupees Ten thousand only) within **one month** by way of exemplary costs and with the direction to the trial court to proceed with the trial as

expeditiously as practicable in terms of the mandatory provisions of section 309 of the Criminal Procedure Code. **Rule is discharged.**

sd/-

[D. H. Waghela, J.]

msp